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Attorneys for Defendant
PACIFIC BELL TELEPHONE COMPANY

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

CALIFORNIA SPORTFISHING
PROTECTION ALLIANCE,

Plaintiff,

v.

PACIFIC BELL TELEPHONE
COMPANY,

Defendant.

CASE NO. 2:21-cv-00073-JDP

**DECLARATION OF JON DAVID
KELLEY IN SUPPORT OF PACIFIC
BELL'S MEMORANDUM IN
SUPPORT OF MOTION TO COMPEL
COMPLIANCE BY NON-PARTY
BELOW THE BLUE WITH THE
COURT'S ORDERS**

Judge Hon. Jeremy D. Peterson

Complaint Filed: January 14, 2021

1 I, Jon David Kelley, hereby declare as follows:

2 1. I am a partner at the law firm of Kirkland & Ellis LLP and counsel for Defendant Pacific
3 Bell Telephone Company (“Pacific Bell”) in the above-captioned litigation. I submit this declaration in
4 support of Pacific Bell’s Memorandum in Support of Motion to Compel Below the Blue’s (“BtB”)
5 Compliance with the Court’s November 9 and December 7 Orders. I have personal knowledge of the
6 facts set forth herein and, if called as a witness, I could and would testify competently thereto.
7

8 2. Following a December 22, 2023 meet and confer, counsel for Pacific Bell proposed that
9 BtB agree to a document-review protocol. On December 28, 2023, counsel for Pacific Bell provided
10 counsel for BtB with a draft proposed protocol. A true copy of this protocol is attached as Exhibit 1.

11 3. On August 4, 2023, Pacific Bell served a subpoena on BtB. A true copy of the subpoena is
12 attached as Exhibit 2.
13

14 4. During the November 29 meet and confer, BtB’s counsel asserted that some of Jones’s and
15 Fortner’s communications are privileged under the First Amendment. Mr. Koltun represented that BtB
16 entered into an oral agreement with the WSJ, whereby Seth Jones and Monique Fortner of BtB allegedly
17 agreed to act as reporters for the WSJ in connection with its series on lead-clad cables. During that meet
18 and confer Mr. Koltun was unable to detail when the alleged oral agreement was made, with whom at
19 WSJ it was made, or the scope of the purported agreement.
20

21 5. On December 10, 2023, Mr. Koltun sent an email to counsel for Pacific Bell. A true copy
22 of this email is attached as Exhibit 3.

23 6. On December 15, 2023, counsel for Pacific Bell sent an email to Mr. Koltun. A true copy
24 of this email is attached as Exhibit 4.

25 7. On December 18, 2023, the parties met and conferred regarding the subpoena. On
26 December 20, 2023, counsel for Pacific Bell sent Mr. Koltun an email summarizing the December 18,
27 2023 meet and confer. A true copy of this email is attached as Exhibit 5.
28

8. On December 22, 2023, counsel for Pacific Bell and BtB met and conferred. During the call, BtB’s counsel declined to provide the search terms used in part by Jones and Fortner to self-select documents, and acknowledged that additional emails required to be produced by December 7 still had not been produced. Counsel for Pacific Bell orally described a third-party document collection and review protocol. Counsel for BtB objected that such a proposal would only be acceptable if BtB – and not the third-party vendor – had discretion to conduct a “responsiveness” view without involvement of the independent third party. Counsel for Pacific Bell responded that, given BtB’s track record of failing to provide productions by Court-ordered deadlines, BtB’s omission of emails and text messages from prior productions, and BtB’s failure to be transparent about the “search terms” it used, an independent expert should conduct the responsiveness review and production, and Pacific Bell would be willing to bear the cost.

9. On January 3, 2024, Mr. Koltun sent an email to counsel for Pacific Bell. A true copy of this email is attached as Exhibit 6.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed January 4, 2024, in Dallas, Texas.

By: Jon David Kelley

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